

BLUE RIBBON TASK FORCE ON ETHICS ORDINANCE MEETING NOTES

Wednesday, May 5

Room 202-A, Health Building

Attending: Councilmember Ken Yeager (Chair), Councilmember Cindy Chavez, Vice Mayor Pat Dando, Councilmember Chuck Reed

Staff: Rick Doyle (City Attorney), Deanna Santana (City Manager's Office), Julia Chih (City Manager's Office), Norm Sato (City Attorney's Office), Peter Jensen (City Manager's Office).

DISCUSSION

Panel Presentations

The Task Force listened to opening statements by each of five panelists: Jim Cunneen of San José/Silicon Valley Chamber of Commerce; Phaedra Ellis-Lamkins of South Bay AFL-CIO Labor Council; Patricia Gardner of Silicon Valley Council of Nonprofits; Bob Hennessy of San José Conservation Corps; and Autumn Gutierrez of the Strong Neighborhoods Initiative Project Area Committee. Summaries of each statement are listed below:

- **Jim Cunneen** – Mr. Cunneen acknowledged the importance of having transparency and accountability. He felt that lobbyist should report whom they are working with, what they are seeking to achieve, and whom they are meeting with. He thought that officeholders should also disclose their meeting schedule. When he registered as a lobbyist in San José, he felt that the question related to listing his clients was not applicable to his organization because the Chamber of Commerce doesn't really have clients.

He requested that Task Force keep the process simple, define what qualifies as lobbying activity rather than who is a lobbyist, and focus on the types of decisions. And, he suggested that the Task Force examine ordinances in other cities that have more mature disclosure policies.

- **Phaedra Ellis-Lamkins** – Ms. Ellis-Lamkins began with the following questions: How do you create transparency? How do you engage people? How do you enhance public trust? She felt that creating access to the political process is important for developing trust with the public. She was supportive of increased regulation; however, she stressed that the system created must be consistently applied and equitable.

In considering the definition of a lobbyist, she identified three measures: 1) percent of organization's budget spent lobbying; 2) amount of time spent lobbying; and 3) amount of money spent on lobbying activities.

She concluded her remarks by reiterating the importance looking at what a lobbyist is and creating an authentic role of citizen participation, such as through community meetings as in the Strong Neighborhoods Initiative process.

- **Patricia Gardner** – Ms. Gardner began by making a distinction between lobbying and advocacy. She stated that 501(c)3 organizations are already closely regulated by the tax code, which includes a substantial test and an expenditure test. The substantial test states that non-profits cannot lobby, while the expenditure test defines the threshold. (She passed out documents showing language.) She does not want something new created because she feels that non-profits already have a lot of requirements. She would be opposed to donor disclosure requirements because she believes it is the right of the donor to be anonymous.

She identified three rights of non-profits that need to be protected: 1) to speak out to clients; 2) to maintain 501(c)3 status; and 3) to protect donor privacy.

- **Bob Hennessy** – Mr. Hennessy stated that he did not believe he was a lobbyist because his interactions with councilmembers are for the purpose of explaining the programs and services provided by the San José Conservation Corps.

He thought it would be beneficial to have lobbyist pay a fee and report their activity so that councilmembers know what lobbyist are advocating. However, he did not feel that 501(c)3s should be considered lobbyist. He asked that the Task Force not make regulations have a negative impact on non-profits.

- **Autumn Gutierrez** – Ms. Gutierrez stated that enhancing the public trust is one of the Project Area Committee's (PAC) greatest tasks and is very crucial. She also felt that providing the community a definition of what lobbying activity is would be helpful. She is excited to talk with the PAC.

Task Force Questions:

- A lobbyist defined only in terms of money does not seem like a good one. It seems that the definition should be when you are trying to influence government, which I think non-profits do. How should we define lobbyist? Should it be anyone who tries to influence decisions? What kind of regulations should we have for non-profits or community organizations? Should we exclude them? (Chair Yeager)
 - Patricia Gardner – stated that they have never asked for money for non-profits, as they are not allowed to. Instead, when they meet with councilmembers, she is educating versus lobbying them. She suggested council calendars be available to the public, as it is in Sacramento, to provide transparency. She believes that Council is elected to hear from the community, which non-profits are a part of, so part of her role is to talk to Council. She felt that the City needed a clear rating system for proposals to prevent the process from being political and to eliminate the need for organizations to meet with officeholders. She thought it was an unfair burden to put disclosure requirements on the community; it should be on the electeds.
 - Bob Hennessy – agreed with Ms. Gardner and added that the issue was also compounded by term limits.
 - Jim Cunneen – expressed his support for term limits, but believes that they are too rigid. While he felt that office holders should post their calendars, he thought it might be a

- problem with respect to unplanned conversations and is concerned that it would be used to blame officeholders. He reiterated that current requirements are hard to comply with. He suggested that there should be categories of lobbyists: contract lobbyists representing clients on specific issues, lobbyists for businesses and other types of organizations, and maybe a category called advocate, since by law they can't lobby.
- Phaedra Ellis-Lamkins – shared the different categories used by the State and pointed out that different categories have specific exemptions. She identified the Secretary of State website as a good resource. For non-profits, she suggested that the Task Force utilize information that is already provided by non-profits from other regulations.
 - Jim Cunneen – stated that lots of contacts are informal, so he does not want the Task Force to make the process difficult. He indicated that when the Chamber of Commerce comes before council, they make it clear whom they are representing.
 - Autumn Gutierrez – agreed that lots of contacts are informal. She felt that it was important that there was a process for the community to be aware of whom councilmembers were talking to. She shared that there was great interest in knowing what is going on, on the other side. She doesn't want something overly burdensome for community members representing their neighborhood, especially as community members see it as their right to talk to councilmembers.
 - Patricia Gardner – opposed adding a category of advocate because she believes it will be difficult to define. She felt that non-profits, as part of the community, should participate in the political process and does not to be prevented from speaking for the community. Their work is for the good of the community, not the big bucks.
- Who should be required to register? For instance, in the context of Coyote Valley or the Loews project, what should the public know? (Councilmember Reed)
 - Patricia Gardner – offered that the City of Sacramento has the clearest definitions of lobbyist that also don't violate current law, as it pertains to non-profits. She added that San Francisco has a similar definition.
 - Phaedra Ellis-Lamkins – felt that the challenge with Coyote Valley is that John Chambers is not required to register, yet the Labor Council is. She suggested looking into what works and what doesn't in other cities, not on paper, but in practice.
 - Bob Hennessy – added that donations to political campaigns can be tricky when lobbying because it can be seen as buying influence, but thought that campaign contributions should be taken into account.
 - The public should know who is involved in trying to influence policy. Public perception focuses on money and its influence. Do you think you directly have influence over how budgets are spent? Should we just follow the money? What if the organization is trying to get a \$1 million contract with the City? Is there threshold for the amount of City money received in defining a lobbyist? (Vice Mayor Dando)
 - Jim Cunneen – felt that influence is about more than money and comes from a lot of different sources. He did not feel that contributions were given quid pro quo, as it is only one element of what the Chamber does.

- Phaedra Ellis-Lamkins – stated that they all have influence over people. She offered the some questions for consideration: How do you get influence? How do you record it? She thought following the money is important, but did not think that it would necessarily fix the problem because it will not capture everything.
- Patricia Gardner – explained that she did not believe that she got access because of contributions, but rather because of the respect she's earned from her work in the county. She didn't feel that using money as the only measure would provide a reasonable definition of a lobbyist. She reiterated the problem that she felt that the lack of a rating system for proposal creates.
- Jim Cunneen and Phaedra Ellis-Lamkins seem to be in one group, in terms of the likeness of the organizations they represent, Patricia Gardner and Bob Hennessy another group, and Autumn Gutierrez in another. If you are a volunteer and come and talk to the Council, you are not personally benefiting. It's difficult to define the difference between a lobbyist and an advocate. How do we define lobbyist and advocate? (Vice Mayor Dando)
 - Phaedra Ellis-Lamkins – agreed that they are different, but reiterated that the definition needs to be consistent.
 - Jim Cunneen – suggested that the Task Force look at the group, rather than the individuals.
 - Autumn Gutierrez – felt it was important to understand what was happening on the other side of the development proposal.
- Irrespective of the rating system, people come to talk to the Council. This is because there are systematic issues at play; the system is so complicated that customers hire people to help them. Monitoring communication has to be done carefully. She then gave an example of the three meetings she had with CBOs that morning. In each meeting, the individual talked about four to eight items which included both business and a charity/arts group issues. Is there a pay to play perception, as described by the San José Mercury News? Los Angeles and San Francisco ordinances looked good on paper, but since the Task Force started, they are both trying to strengthen their laws. How free do you feel to participate in the process? What tools do you need to feel like you can participate as a neighborhood leader? (Councilmember Chavez)
 - Autumn Gutierrez – stated that transparency and openness are tremendously important. She felt that the PAC has influence over how money is spent when it comes to general city service delivery, but not on land use issues, where she felt developers had more influence. She shared that there was a community perception that those with a lot of money in projects were more likely to get their way. She also revealed that the community believed that they should also benefit from development, given that both the developer and the City benefit from the transaction. She suggested that the Council give neighborhoods the opportunity to think about what they want in terms of leverage.
 - Phaedra Ellis-Lamkins – asked how organizations could get access to information, so that they could be more proactive in the process, and less reactive.

- Even when the neighborhood is included, there is a different public perception. Would it be important to disclose the financial impact to the City of individual proposals?
(Councilmember Chavez)
 - Autumn Gutierrez – felt that actions and post-measurements are what will matter more to the community than projections at the outset. She believed that including the community in the process would help change that perception. She thought it would also be important for the City to build measurements to gauge its progress.
 - Jim Cunneen – shared that the business community would welcome a simpler and more direct process, so that there is predictability and consistency. He felt that developers had to overcome a series of obstacles in the course of doing business with the City. He suggested benchmarking the City's progress against neighboring cities.
- Should I report when I ask people to contribute to non-profits? (Vice Mayor Dando)
 - Autumn Gutierrez – gave an example about how changes to Specific Plan elements aren't always discussed during public hearings, unlike in the General Plan process.
- There is a perception that you need to hire a lobbyist in order to get things approved.
(Councilmember Reed)
 - Jim Cunneen - confirmed that there was this perception based on some experiences he was aware. He shared one example in which an individual was asked by a councilmember who their lobbyist was.
- It's important for businesses to confess who's telling them that they need a lobbyist.
(Councilmember Chavez)
 - Phaedra Ellis-Lamkins – felt that most people figure out on their own that they need a lobbyist; they are not specifically told that they need a lobbyist.

Public Comment

None

Next Meeting

The Task Force's next meeting is scheduled for Monday, May 10, 9:00 a.m. to 11:00 a.m., in Room 202-A of the Health Building.